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CONTEMPT OF COURT.

(*Continued from May No., ante, p.* 289.)

(*American decisions modifying the English doctrine as to the exclusive power of superior courts at common law over contempts.*)

To make clear the grounds of the departure to a greater or less extent in several states from the strict English rule previously discussed, it is well to advert to the differences between the English system of courts and that generally established in this country at the epoch of its separation from the mother country.

Although the Court of King's Bench had precedence over all other courts, being held *coram rege*, and could issue a certiorari to any of them (Com. Dig. *Certiorari*, A. 1), yet the other courts of Westminster Hall were of nearly equal dignity. The courts of Westminster Hall, the King's Bench, Common Pleas, Exchequer and Court of Chancery, with the House of Lords, constituted, according to Bac. Abr. (*Courts* D.), the "more principal superior courts;" from the necessity of the case their power over contempts was exclusive, and although this power belonged to all the superior courts, the principle of its exclusiveness was established with reference to these courts and the two houses of parliament. This is evident from the language of the English cases above commented on, also *Burdett* v. *Abbott*, 14 East 1, and others, where the power of the House of Commons was called in question.

BLACKSTONE, J., in his opinion in the *Lord Mayor's Case*, confines himself to these courts; the distinction between them and other superior courts is strongly dwelt on in the argument in *Re*

Fernandez (10 Com. B. N. S. 3), and adverted to in the opinion of COCKBURN, C. J., in *Reg.* v. *Lefroy*, Law Rep., 8 Q. B. 134; 4 Moak 250. See also *Williamson's Case*, 26 Penn. St. 25, 28.

No order of courts like those of Westminster Hall ever existed in this country. In each state there was created one, or, where a separate equity system had been established, two courts of last resort, which took the place of the King's Bench and Court of Chancery in England, and which had a superintending jurisdiction over all other courts.

The Supreme Court of Pennsylvania, under the Act of 1722, had the powers of the common-law courts of Westminster Hall: GIBSON, C. J., in *Commonwealth* v. *Beaumont*, 4 Rawle 366.

Failing the most cogent reason of the English rule, in some states, as in Pennsylvania, it was no longer observed, though in the majority, as shown above, it was still adhered to; and in Pennsylvania the courts reverted to it when conditions like the English prevailed, and a commitment by one superior court, independent and co-ordinate, was brought before another, as happened in *Passmore Williamson's Case*, 26 Penn. St. 9, *supra*, where the Supreme Court refused a writ of habeas corpus, for one committed by the United States District Court, recognising the difference between their power in regard to commitments made by state courts, and that under consideration: pp. 17, 23, 25, 28. Though BLACK, J., was evidently of opinion that the case before them, coming upon an application for a habeas corpus, the result would have been the same had the commitment been by a subordinate state court: pp. 17, 20.

The two principal cases which settled the law of Pennsylvania until the decision in *Ex parte Steinman*, *infra*, as to the power of revision of sentence for contempt by superior courts, are *Hummel and Bishoff's Case*, 9 Watts 416 (1840), and *Commonwealth* v. *Newton*, 1 Grant 453 (1857).

The first of these came up into the Supreme Court on writ of error to a Court of Common Pleas, the propriety of which was not questioned, though the court considered a writ of certiorari the appropriate mode of bringing the matter before it. The court below had fined the plaintiffs in error for contempt, and from this judgment a writ of error was taken. SERGEANT, J.' delivering the opinion of the court, declared that the Act of June 16th 1836, relative to contempts of court, had made "no change in the juris-

diction of the Supreme Court so far as respects its superintendence over the proceedings of inferior courts," (citing the opinion of GIBSON, C. J., in *Commonwealth* v. *Beaumont*, 4 Rawle 366, as to the previous powers of the court under the Act of 1722, in which he says it had all those possessed by the King's Bench, Common Pleas and Exchequer at Westminster), and shows "that it exercised a general superintending jurisdiction over the proceedings of inferior tribunals, whether proceeding by the course of the common law or where they are summary or not before a court of record." * * * "If this be so in civil proceedings, there is still stronger reason why the proceedings by an inferior tribunal, for a contempt of court, should be subject to the revisory power of this court, to see that they have not overstepped their jurisdiction and exercised this summary power in a case not warranted by the laws. For this is always ranked as a criminal proceeding, and the general common-law rule is, that a certiorari lies from the King's Bench to remove all criminal proceedings of an inferior court, unless there be a special exemption, or unless where, after conviction, the party is put to his writ of error: 2 Hawk. P. C. 406, 408. The object of the removal is not to inquire into the merits of the case, but to ascertain whether the court had jurisdiction and exercised it according to law." It was held that the persons committed were officers of the court, while in the execution of their office as county commissioners, that the court below had jurisdiction, and that its proceedings were regular; the judgment was affirmed.

This case was followed in 1857 by *Commonwealth* v. *Newton*, 1 Grant 453, where an attorney was stricken from the roll for contempt, in not appearing as a witness before the judge of the Common Pleas, sitting as commissioner under a rule of court. The case came up on certiorari, the propriety of which was not questioned. WOODWARD, J., citing and approving *Hummel and Bischoff's Case*, and the Pennsylvania Act of June 13th 1836, relative to contempts of court, showed that in the case before the court, the Court of Common Pleas had no jurisdiction, and its proceedings were most unwarrantable. The so-called contempt was not a contempt of the court which assumed to punish it, and the punishment was one which could not have been inflicted for that offence, either by the court or the judge sitting as commissioner.

The language of the opinion is very clear and forcible: "What-

ever doubts were raised by *Austin's Case*, 5 Rawle 191 (1835), and *McLaughlin's Case*, 5 W. & S. 272 (1843), as to the right of this court to review the action of inferior tribunals in suspending members of the bar from practice, there is no ground to doubt our jurisdiction in this case, because this is a proceeding for contempt, which is a substantive criminal offence, and of which we take cognisance on certiorari or writ of error, in the same manner and to the same extent we do any other public offence, for which the courts subject to our appellate jurisdiction assume to punish a citizen. Our jurisdiction results out of the constitution of this court. It is not self-assumed, but is forced upon us by the legislative imposition of powers and duties under which we sit, and is one of the securities of the liberty of the citizen." * * * "We do not, indeed, revise such cases on their merits." The courts having a limited jurisdiction in contempts, every fact found by them is to be taken as true, and every intendment is to be made in favor of their record, if it appears to us that they proceeded within and did not exceed their jurisdiction; but for the purpose of seeing that their jurisdiction has not been transcended, and that their proceedings, as they appear of record, have been according to law, we possess, and are bound to exercise, a supervisory power over the courts of this Commonwealth." The order of the Common Pleas was annulled. *Williamson's Case* was distinguished on the ground that the committal was by a court of the United States. For an appeal in case of contempt, to the Supreme Court, see Tome's Appeal, 50 Penn. St. 285 (1865), in which, however, the object was to enforce a civil remedy. In another like proceeding the matter was brought before the Supreme Court on habeas corpus, and a certiorari: *Commonwealth* v. *Reed*, 59 Penn. St. 425, (1868).

The opinion just cited discriminates between cases where it is sought to revise the control of courts over the members of their bar, and other cases of contempt, and the former constitute an exception to the Pennsylvania doctrine on the point under discussion.

In addition to *Austin's* and *McLaughlin's* cases, above mentioned, there is a similar one—*Dickens's Case*, 67 Penn. St. 169 (1870).

Austin's Case was before the Act of 1836, but in this case, as well as in *Dickens's*, the proceedings of the Common Pleas came before the Supreme Court by virtue of special Acts of Assembly;

in the first the Supreme Court being directed to take cognisance of the matter; in the second on certiorari.

In the first, the Supreme Court decided that the act complained of was not a contempt, and ordered the relator restored to the roll of attorneys; in the second, citing and approving the first, that though no contempt had been committed, the act of the appellant was good ground for striking him from the roll, and affirmed the order of the lower court.

McLaughlin's Case, 5 W. & S. 273 (1843), was subsequent to the Act of 1836. The relator applied to the Supreme Court for a mandamus to the District Court of Philadelphia to restore him to the roll, from which he had been stricken off for contempt in making a certain publication. The court, citing *Commonwealth* v. *The Judges*, 1 S. & R. 187, laid down the law that if the admission of an attorney is a judicial act, his dismission is also, that they could give relief in neither case. Although a mandamus had been issued to an inferior court, such as the mayor of Reading, to restore an attorney to the roll, no case had been cited where such a writ had issued to the Common Pleas, Exchequer or King's Bench. "The District Court is a court of record, and although a subordinate, cannot be considered as an inferior court in a judicial sense. It is an inferior court only in the same manner, and to the same extent as the Court of Common Pleas in England is inferior to the King's Bench, the King's Bench to the Exchequer, and all the courts in the kingdom to the House of Lords." * * * "Courts of record and of general jurisdiction are vested with exclusive power to regulate the conduct of their own officers, and in this respect their decisions are wisely put on the same footing with that numerous class of cases which is wisely confided to the legal discretion and judgment of the court having jurisdiction of the subject-matter. In the case of *Austin et al.*, 5 Rawle 191, it required the aid of an Act of Assembly to give this court jurisdiction, and this is a strong, if not conclusive, argument against the motion." It was further remarked, "that the powers of the courts to punish the official misconduct of their officers is expressly reserved in the Act of June 16th 1836." The jurisdiction of the lower court and the regularity of its proceedings were not questioned.

The opinion concludes: "that the District Court has exclusive jurisdiction of the case under their constitutional responsibility,

and that this court has no authority to give relief to the relator in this or any other form, whether it be certiorari, appeal or by writ of mandamus." See also *Sanders* v. *Metcalf*, 1 Tenn. Chan. 419; *State* v. *White*, Charlton 123. For authority for this distinction, though not so cited, see Bac. Abr., *Attach.*; 2 Hawk. *Attach.*; 3 Atk. 568, cited in *Yates's Case*, 9 Johns. 395. In the cases of *In re Greevy*, 4 W. N. C. 308, and *Ex parte Steinman*, 8 Id. 296 (1880), it was attempted to establish an exception to the doctrine of *McLaughlin's Case*, on the ground that the offenders, who had published in the newspapers of which they were editors articles extremely insulting, and in the latter case grossly libellous, of the court, were not amenable therefor in their capacity as attorneys; but the court rejected the attempted distinction, holding the accused liable to the fullest extent. In the case of *Ex parte Steinman*, the court preferred to waive the contempt and punish for "misbehavior in their office of attorney," as in *Dickens's Case*, *supra*.

This was the decision of the courts in which the matter originated, beyond which *Greevy's Case* did not go, but in *Ex parte Steinman*, on writ of error to the Supreme Court, it was overturned and the relators restored to their offices: 9 Weekly Notes of Cases 145.

Since the Pennsylvania law was settled by the above-cited cases, prior to *Ex parte Steinman*, it has been greatly changed by the 7th sect. of the 1st art. of the constitution of 1874, and the Act of Assembly May 19th 1879, Pamph. L. 66. The first of these prohibits conviction for publications as to official conduct of public officers, &c., where not made negligently or maliciously. In *Steinman's Case*, SHARSWOOD, C. J., declared: "It would be a clear infraction of the spirit, if not the letter, of this article to hold that an attorney can be summarily disbarred for the publication of a libel on a man in a public capacity, or where the matter was proper for public investigation or information; for a man certainly does not forfeit his rights as a freeman by becoming an attorney:" p. 147. Nor in view of this article of the constitution, and of the fact that the judiciary is now elective, and the proper remedy for their misconduct is an appeal to the people, did the act of the complainants constitute "misbehavior in office," for which an attorney may be disbarred. The Act May 19th 1879 gives a writ of error from the Supreme Court to any attorney against

whom proceedings have been had in any court for unprofessional conduct as an officer of such court, and requires the Supreme Court "to review the same *de novo*." It "gives this court jurisdiction to review the discretion of the court below, and we think it was not in this case wisely exercised:" p. 148. Even prior to the constitution of 1874, and under the ruling in *Austin's Case*, the motives of the libellous publication in this case were not such as to constitute it a breach of professional duty: p. 148. There is a similar provision in the constitution of Illinois: *Storey* v. *People*, 79 Ill. 45 (1875). The views of the court were much the same as in *Steinman's Case*.

In Indiana and Illinois there has been a wide departure from the English doctrine, which was followed in the early cases of *State* v. *Tipton*, 1 Blackford 166, and *Clark* v. *People*, Breese 266.

In *Whittem* v. *State*, 36 Ind. 196 (1871), *State* v. *Tipton* was overruled, and it was settled that under the Code of Indiana an appeal to the Supreme Court from the judgment of a circuit court committing for contempt, was prescribed by the Code, it being a final judgment in a criminal case. The power to punish for contempt in Indiana is conferred on the courts by statute. Cases where the judgment of the committing court comes collaterally, as on habeas corpus, before the examining court, are distinguished from those where judgments come up for direct examination on writ of error or appeal. The court cited and followed *Commonwealth* v. *Newton* and *Hummel and Bischoff's Case*, *People* v. *Hackley* and other New York cases, and then proceeded "to determine whether the conduct of the appellant constituted a contempt of court," "and whether the court acted within or exceeded its jurisdiction," and decided "that the court erred in finding the appellant guilty of contempt on the evidence."

In this case was cited *Stuart* v. *Commonwealth*, 3 Scam. 395 (1842), where a very similar decision was made under the statutes of Illinois, and *Clark* v. *People* was distinguished. See also *Storey* v. *People*, 79 Ills. 45 (1875).

The law in New York, as established by *Yates's Case*, 9 Johns. 395, has been but little changed by statute, which, as the cases from that state above cited show, is in accord with it. The statute provides an appeal in such cases. See *People* v. *Jacobs*, 5 Hun 428 (1875). An exception to the general

principle has been recently set up in *People ex rel., &c.*, v. *Kelly*, 24 N. Y. 74; s. c. 1 Am. Law Reg. (N. S.) 534 (1861).

This was a commitment for contempt in refusing to answer before a grand jury, by the Court of General Sessions of New York city. The case came up to the Court of Errors and Appeals on appeal from the judgment of the Supreme Court on a writ of habeas corpus, remanding the relator, and also on an appeal from the judgment of that court dismissing a certiorari to the Court of General Sessions; the object of both being the same, to test the legality of the imprisonment.

DENIO, J.: "As a general rule, the propriety of a commitment for contempt is not examinable in any other court than the one by which it was awarded. This is especially true where the proceeding by which it is sought to be questioned is a writ of habeas corpus, as the question on the validity then arises collaterally and not by way of review." * * * "But the conduct charged as contempt must be such that some degree of delinquency or misbehavior can be predicated of it, for if the act be plainly indifferent or meritorious, or if it be only the assertion of the undoubted right of the party, it will not become a criminal contempt by being adjudged to be so. The question whether the offender really committed the act charged will be conclusively determined by the order or judgment of the court; and so with equivocal acts, which may be culpable or innocent according to the circumstances; but where the act is necessarily innocent or justifiable, it would be preposterous to hold it a cause of imprisonment."

If the refusal to answer was only the assertion of a constitutional right, the commitment for contempt was illegal, "and the error was certainly reached by the certiorari, if not examinable on the return to the habeas corpus."

Very similar to this language is the remark of ERLE, C. J., in *Re Fernandez*, 10 Com. B. (N. S.) 32, respecting *Bushel's Case*, *supra*, which he characterizes as "a most unconstitutional commitment of a jury."

In a note to *People* v. *Kelly*, reported in the American Law Register, by Professor Dwight, he states the principle established in the *Lord Mayor's*, *Kearney's*, and *Williamson's Cases*, but holds it inapplicable to such cases as that under consideration, and *Commonwealth* v. *Newton*, *supra*, in which, if there be no other method

of reviewing the propriety of a conviction for contempt, it should be examinable on habeas corpus to prevent a failure of justice. *The Commonwealth* v. *Newton*, he remarks, was decided "as the result of a proper construction of a state statute," which, however true it may be, does not make this case of no authority as regards the general principle: this is evident on examination of the case; also, of the opinion of SERGEANT, J., in *Hummel and Bischoff's Case*, *supra*, and that of GIBSON, C. J., in 4 Rawle 366, cited by him.

The ground on which Professor Dwight bases his view is, that the principle of the *Lord Mayor's Case*, even if it be considered to embrace such cases as *People* v. *Kelly*, and *Commonwealth* v. *Newton*, should extend only to those "where the commitment is for contempt generally. If the ground on which the adjudication was made *appeared upon the face of the return*, and this was palpably bad, the prisoner ought to be discharged. By parity of reasoning, the court on habeas corpus should have a right to examine the return, to ascertain if it were wholly insufficient," citing the opinion of Lord ELLENBOROUGH in *Burdett* v. *Abbott*, 14 East 150–1, which fully sustains this distinction. See also *In re Fernandez*, 10 Com. B. (N. S.) 60.

Professor Dwight also cited *Ex parte Rowe*, 7 Cal. 175, 181, 184, and *Burnham* v. *Morrissey*, 14 Gray 226, where the Supreme Court of Massachusetts held that they could, on habeas corpus, inquire into the lawfulness of imprisonment by the House of Representatives of Massachusetts: *People* v. *Kelly*, was cited and approved in *People* v. *Jacobs*, 5 Hun. 428 (1875).

The decisions in California, though under the statutes of that state, are in accord with the foregoing. In *Ex parte Rowe*, 7 Cal. 175, &c., a habeas corpus case, the Supreme Court held that it is "the right and duty of this court to review the decisions of inferior courts in cases of contempt, as well as in others," and "that each court empowered to punish for contempt, is not the sole and final judge in all cases of contempt," and it can be done on appeal or certiorari: *People* v. *O'Neil*, 47 Cal., 109.

And the Supreme Court will issue a mandamus to an inferior court to reinstate an attorney stricken off its rolls, where the proceedings were not regular: *People* v. *Turner*, 1 Cal. 143.

In Iowa the doctrine is that in absence of statute law each court of record is the sole judge of contempt therein: *First Congrega-*

tional Church v. *Muscatine*, 2 Iowa 69. By statute such cases can be revised, but by certiorari only, by a higher court: *Dunham* v. *State*, 6 Iowa 245; *Robb* v. *McDonald*, 29 Iowa 330.

The Supreme Court of North Carolina will review on the merits the order of a Superior Court disbarring an attorney for contempt. The proper procedure is by certiorari, in nature of a writ of error, which the constitution of North Carolina empowers it to issue. A mandamus would not be proper: *Ex parte Biggs*, 64 N. C. 202, (1870). Formerly the only method of revision was on habeas corpus: *State* v. *Mott*, 4 Jones 449 (1857).

In South Carolina, on a commitment for contempt by a court of record having jurisdiction, which is the judge of contempts against itself, the remedy for irregularity in the proceedings, or error in judgment, is by appeal, not habeas corpus. This was a habeas corpus in the Supreme Court for a person committed by the Circuit Court: *In re Stokes*, 5 S. C. 71.

The action of a district court in Kansas in punishing an attorney for contempt, will be reviewed on appeal by the Supreme Court, and the question whether the act or word punished was a contempt considered, as well as the power of the court to punish: *Re Pryor*, 18 Kansas 72. This case was ruled on the authority of *Commonwealth* v. *Dandridge*, 2 Va. Cases 408, where the court, whose action came under review, was a county court which is a court of the "inferior order." See *infra* as to what are inferior courts.

Under the constitution and the recent code of Tennessee, the Supreme Court has revisory jurisdiction in cases of contempt, either on writ of error or appeal: *Hundhausen* v. *Insurance Co.*, 5 Heiskell 702, (1871); on habeas corpus, *Sanders* v. *Metcalf*, 1 Tenn. Chan. 419 (1873).

The law in Georgia has been somewhat modified from its original strictness, and the Supreme Court has intimated that it would discharge persons committed for contempt by subordinate courts having jurisdiction in cases where there had been a "most flagrant abuse of its discretion:" *Cabot* v. *Yarborough*, 27 Ga. 476; *Howard* v. *Durand*, 36 Id. 346; *Dobbs* v. *State*, 55 Id. 272.

A similar tendency is manifested in the case of *Ex parte Burr*, 9 Wheat. 529 (2 Cr. C. Rep. 379), *supra*, where the Supreme Court of the United States, on motion for a mandamus to a District Court to restore an attorney stricken off its rolls for contempt, though refusing the writ, and expressing doubts as to their

power in the matter, said that whatever it was it would be exercised, only when the conduct of the court below had been "grossly irregular or flagrantly improper." It could only interpose on the ground that the Circuit Court had clearly exceeded its powers, or had decided erroneously on the testimony.

In Michigan it has been held in *Romeyn* v. *Caplis*, 17 Mich. 449 (1868), citing and following *People* v. *Sturtevant*, 5 Seld. 263, that on appeal the Supreme Court had power, not to revise every matter involved in the judgment, but to "review the determination below in respect to questions of jurisdiction, arising out of the determination itself, or in relation to the fact of contempt, as depending upon the question whether the terms of the writ covered the specific act supposed to be a breach of the writ." See also *Shannon* v. *State*, 18 Wisconsin 604.

The decisions above commented on, both English and American, from the *Lord Mayor's Case* down, seem on careful consideration to establish fully the general principles above laid down as to the force and effect of commitments or punishments for contempt by superior courts, that is courts of record and general jurisdiction.

A more detailed examination of the statement of these principles may make them clearer in their various bearings, and may perhaps bring into harmony some of the American decisions, such as that in the *People* v. *Kelly*, at variance with the *Lord Mayor's Case*, by showing that their departure is more apparent than real.

We have seen that as regards superior courts there is always a presumption that their proceedings are regular and that they have jurisdiction, neither of which matters will be examined into by any other court on proceedings for contempt.

If, however, there is manifest on the face of the proceedings a want of jurisdiction, if it is apparent that the court has exceeded its jurisdiction, or has no jurisdiction, the matter would be adjudged *coram non judice*, and the order or sentence in question void.

In case of contempt in disobeying an order of court, if the court had no power to make such order, disobedience to it would be no contempt: See Vin. Abr. *Contempt*, c. 14, consequently the court would have no jurisdiction to punish: *Sparks* v. *Martyn*, Ventris 1.

Precisely the converse of this is found in *Rex* v. *Clement*, 4 B. & Ald. 218, where the proceedings of the Court of Commissioners

at the old Bailey, a superior court (see same case in 6 H. & N. 727), came up before the King's Bench on certiorari, and the orders in question were pronounced to be within the power of the Court of Commissioners. In *Bickley* v. *Commonwealth*, the higher court held that the committing court exceeded its jurisdiction in regard to the term of imprisonment, and discharged the prisoner. In *Middlebrook* v. *State*, 43 Conn. 257, the jurisdiction and proceedings of the lower court were affirmed and held good, but its judgment as to a portion of the sentence overruled, as not warranted by the statute prescribing the punishment. In *Ex parte Fernandez*, the examining court, the Court of Common Pleas, held that the Court of Assize was a superior court, and that, therefore, its warrant, "in respect of a matter within its jurisdiction," was sufficient, though it set forth the contempt in general terms only.

No more than this is requisite in the warrant or order of a superior court; but here another distinction is developed, adverted to in several cases heretofore cited. If such warrant or order set forth as matter constituting the contempt, that which plainly is not a contempt, and cannot be so considered, nor held to justify the imprisonment without a clear violation of law, then the court before which such sentence comes for examination can do no otherwise than hold the same illegal, and relieve from fine or imprisonment thereunder. Exactly this occurred in *Bushel's Case*, Vaughan 135, where the commitment by the Court of Sessions for the causes set forth in the warrant was clearly illegal, and this was one, if not the chief ground of their discharge by the Common Pleas. See the discussion of this case, *supra*, also *People* v. *Kelly*, *supra*; *Ex parte Summers*, 5 Ired. 149, and Lord DENMAN, C. J., in *Carus Wilson's Case*, Ad. & E. (N. S) 1015. And if the proceedings are on the face of them so grossly defective as to be void, the person committed will be discharged on habeas corpus: Hurd on Habeas Corpus 412; *Ex parte Kilgore*, 3 Texas 247. To this extent the jurisdiction and proceedings of a superior court can be called in question: 2 Bishop's Crim. L., sect. 268; *Mitchell's Case*, 12 Abb. Pr. 249; *Wilson* v. *Wyoming Territory*, 1 Wyoming 114, 156; *Vilas* v. *Burton*, 4 Am. Law Reg. 168; Hurd on Habeas Corpus 415, note.

The distinction in this respect between the jurisdiction of superior and that of inferior courts will be explained hereafter, set forth

succinctly it is, that the first is presumed to exist and must be disproved, the second is presumed not to exist and must be proved.

(*Of a further remedy in case of abuse of power in this respect by a superior court.*)

The only remedy, other than the limited power of revision above set forth, according to the English, and more generally received American doctrine, for any error, injustice, abuse of discretion, oppressive or corrupt conduct on the part of the judge of a court of the superior order, is by resort to an impeachment before the legislature. *Rex* v. *Davison*, 4 B. & Ald. 329; *Johnston* v. *Commonwealth*, 1 Bibb 598; *Middlebrook* v. *State*, 43 Conn. 259; *Williamson's Case*, *supra*; *In re Pryor*, 18 Kansas 72.

A number of such cases may be found in our annals. Among them may be mentioned that of Judge PECK, of a United States District Court, before the House of Representatives in 1831, and that of the judges of the Supreme Court of Pennsylvania in 1807, which, though it ended in their acquittal, led to the passage of the Act of Assembly of 1809, limiting the power of the court over contempts.

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(*To be continued.*)

RECENT AMERICAN DECISIONS.

Court of Appeals of Maryland.

JOHN G. HARRYMAN ET AL. *v.* ALBERT D. ROBERTS.

A judgment recovered against a defendant in another state, is a bar to a suit brought upon the same cause of action in Maryland; and when it is relied on as a plea in bar, the only question open for inquiry is, whether the court in which the judgment was rendered, had jurisdiction of the person or subject-matter. The judgment is conclusive as to the merits of the controversy.

Where a suit is brought in one state on the same cause of action on which judgment has been recovered in another state, and such judgment is pleaded in bar to a recovery in the second suit, it is not sufficient answer to such plea, to allege that a motion was filed by the defendant in the court in which the judgment was rendered to set the same aside on the ground that he was not indebted to the plaintiffs, and that he had not been served with process; and that for the purpose of pleading the said judgment in bar in the second suit, the defendant fraudulently consented to have the said motion overruled.

While it is essential to the validity of a judgment that the defendant should have notice of some kind, it is not always necessary that he should be served with personal process.

Each state has the right to prescribe by law how its citizens shall be brought into